

OPINION 103

OFFICIAL OPINION NO. 103

November 12, 1953.

Mr. A. L. Fossler, Chairman,
State Board of Tax Commissioners,
Room 301, State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter requesting my opinion which reads as follows:

“Facts: In 1952 a County Assessor places a 1952 payable in 1953 assessment on the rolls as omitted personal property without notice to the taxpayer (see Acts 1919, ch. 59, sec. 162, p. 198, 11 B. A. S. (1951 Repl. pt. 2) § 64-1102; Acts 1919, ch. 59, sec. 156, p. 198, as amended by Acts 1943, ch. 159, sec. 1, p. 476, 11 B. A. S. (1951 Repl. pt. 2) § 64-1026). The property assessed is a royalty interest in connection with oil producing lands owned by the royalty owner. The taxpayer in 1953, prior to November 1, filed with the State Board of Tax Commissioners a petition for review of assessment under Acts 1919, ch. 59, sec. 209, p. 198 as last amended by Acts 1949, ch. 138, sec. 1, p. 370 (11 B. A. S. (1951 Repl. pt. 2) § 64-1407) on the grounds that the taxpayer did not receive notice, that the taxpayer did not have an opportunity to be heard, that the assessment was made to cover the petitioner’s royalty interest as a landowner in respect to certain oil wells on said land, and that petitioner’s royalty interest is under the law of Indiana an interest in realty and is not personal property and cannot be assessed as personal property. The petitioners ask the Commission to authorize and direct the correction of such assessment by eliminating and omitting the assessment. The decision of the State Board of Tax Commissioners is now pending.

“1. Can the State Board of Tax Commissioners in the above factual situation issue an order to have the County Auditor remove the assessed value listed on the books as personal property and place the said val-

uation on the books as an increase in the assessed value of the land, upon which the producing oil wells are located, thereby correcting the assessment by a change of classification of assessable property?

"2. Does the Commission have to give a notice and hearing to the taxpayer before making an order as set out above?"

The statute granting the right to correct errors in tax duplicates is Section 209, Chapter 59 of the Acts of 1919 as amended, the same being Burns' Indiana Statutes (1951 Repl.), Section 64-1407 and reads in part as follows:

"The county auditor shall from time to time correct errors which may be discovered in the tax duplicate, either in the name of the owner, in the description of the property, or in mathematical calculation of tax properly to be charged, and he shall make such correction and add from time to time any such correction or additional or omitted assessment made by himself, by the county assessor or in the Indiana tax board; and when such correction is made after the tax duplicate shall have been delivered to the treasurer for collection, the auditor shall give a certificate of correction to the treasurer, who shall keep the same as his voucher or settlement with the auditor. After the adjournment of the county board of review no changes except for errors of the kinds above mentioned shall be made without the authorization of the Indiana tax board (state board of tax commissioners); and *said Indiana tax board is empowered, at any time prior to the first Monday in November of the year following the assessment, upon a verified application duly filed with it, to review and authorize the correction of any assessment, if such assessment complained of was made by the assessor or the Board of Review, without notice to the taxpayer, and without opportunity for the taxpayer to be heard thereon.*" (Our emphasis.)

It is to be noted that this section was amended in the years 1925, 1941, 1943 and 1949.

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The original section, the same being Section 209 of Chapter 59 of the Acts of 1919, contained merely the first sentence of the portion of the section above quoted. The section at that time was limited to the action of the county auditor in correcting tax duplicates and in no way required or authorized any action on the part of the State Tax Board. Section 1 of Chapter 148 of the Acts of 1925 inserted the second sentence in the above quoted excerpt in practically its present form. The remainder of Section 64-1407 was added in 1925 but has been amended to its present form. The remainder of the section not quoted above in its present form also pertains to various authorized actions on the part of the State Tax Board in correcting other types of errors in tax assessments. So what was originally an act authorizing the Auditor to correct errors in tax duplicates now authorizes corrections to be made in certain instances by the State Tax Board. In order to invoke the jurisdiction of the State Board in regard to a correction in a tax duplicate a verified application must be filed with the State Board after the adjournment of the County Board of Review and prior to the first Monday in November of the year following the assessment, and in addition the assessment must have been made by the assessor or the Board of Review without a notice to the taxpayer and without an opportunity for the taxpayer to be heard.

The meeting date of the various County Boards of Review are determined by Chapter 103 of the Acts of 1943, same being Burns' Indiana Statutes Annotated, Sections 64-1202 and 64-1205. Although the meeting dates vary, County Boards of Review meet in the year in which assessments are made. The language "to the first Monday in November of the year following the assessment" found in Section 64-1407 has been construed by this office in a 1943 Opinion (1943 O. A. G., pages 254, 256) to mean the first Monday in November in the year subsequent to the year in which the assessment was made. In that opinion the second sentence of the quoted portion of Section 64-1407 was construed and it was indicated that this portion of the section related to applications by a taxpayer direct to the State Tax Board for relief by way of a correction in his tax duplicate on matters to which he was not given notice or an opportunity to be heard by the local assessing officers. The language used in that opinion is as follows:

“There are other considerations, which, it seems to me, point in the same direction, and that is the fact that the language seeks to give the taxpayer a measure of relief from an assessment which has been made without notice to him and without opportunity for him to be heard. If that is the purpose of the Act, and I think it clearly is, there would be only a very remote chance that such taxpayer would know of his increased assessment until taxpaying time in the year following the assessment.”

In considering the exercise of authority under this section it is well to bear in mind that the State Tax Board is an agency of limited jurisdiction and for that reason is restricted and limited in its actions to the powers granted by statute. The general powers of the State Tax Board has been discussed in an official opinion of this office (1943 O. A. G., page 261) by the use of the following language beginning on page 262:

“* * * In other words, such a Board has no general jurisdiction. In this connection, I call your attention to the case of State Board of Tax Commissioners v. McDaniel, 199 Ind. 708, page 716, where the Court said:

“‘This Board’ (referring to the State Board of Tax Commissioners) ‘is not one of general jurisdiction; its jurisdiction and powers conferred by statute are limited. Not only are the orders which it may make particularly described and limited, but the method of procedure which the board must pursue is plainly and unequivocally set forth in the law. Twice within recent years have the courts decided that the powers conferred upon the board are limited by the statute’ (citing authorities).

“Continuing, the Court further said:

“‘* * * but it has also been decided by the courts that where the statute provides the procedure through which the board must proceed as a foundation for its orders, such prescribed procedure must be followed implicitly, and such procedure is a measure of the power given.’

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“See also State Board of Tax Commissioners v. Belt Railroad and Stock Yards Company, 191 Ind. 282, at page 285, where the Court said:

“The state board of tax commissioners is a body of special statutory powers and acts outside of its granted powers are absolutely void.’

“In this same case, the Court quotes from the case of Gray v. Foster, 46 Ind. App. 149, as follows:

“In Gray v. Foster, *supra*, the court stated the rule as follows: “The State Board of Tax Commissioners is a statutory board, and its power and authority are conferred and limited by the statute. * * * Where power is given it to do a certain thing in a certain manner, the manner prescribed is the measure of power given.”’”

Again the general powers of the State Tax Board were discussed in an Official Opinion of this office (1945 O. A. G., page 116, No. 25, beginning on page 118) as follows:

* * * Like all administrative boards of the state, the State Board of Tax Commissioners has only such powers as are specifically delegated to it by law.

“Cody v. Board (1932), 204 Ind. 87, 91;

“State Board of Tax Comm. v. McDaniel (1927), 199 Ind. 708, 716.

“The State Board of Tax Commissioners is a statutory board, and its power and authority are conferred and limited by the statute. * * *

“Where power is given to it to do a certain thing in a certain manner, the manner prescribed is the measure of the power given. * * *

“Gray v. Foster (1910), 46 Ind. App. 149, 155.

“See also:

“Doyle v. Lafayette Savings Bank (1923), 81 Ind. App. 177.

“The board cannot exercise its powers to a greater or less extent than is authorized by statute.

“Taylor v. Patton (1902), 160 Ind. 4, 7.

“The statutory authority of a state administrative agency to require the performance of an act by an individual must be specifically conferred by law.

“C. & E. I. R. R. Co. v. Public Serv. Comm. (1943), 221 Ind. 592, 594.”

Therefore in accordance with the above quoted statutes, opinion and case authority, the State Board of Tax Commissioners can review and authorize the correction of errors in tax duplicates only upon a verified application being filed in accordance with the statute by an affected taxpayer.

It is therefore my opinion:

1. The county auditor may remove the assessments by certificate of error upon the approval and authorization by the State Board of Tax Commissioners.

2. The particular facts submitted show that the taxpayer has properly availed himself of the statute to petition the State Board of Tax Commissioners for a correction of his tax duplicate alleging an error committed by local taxing officials.

It also appears that the petitioner owns the particular property involved, but because of error the property was improperly assessed, not as to value but as to the classification of the property.

Once it is admitted that a person owns certain taxable property nothing will discharge the state's claim or the obligation to pay the tax except actual payment. See Hunter Store Co. v. Woodard, Treasurer (1899), 152 Ind. 474, 53 N. E. 947.

Under the section of the statute upon which the petitioner comes before the State Board of Tax Commissioners and invokes their jurisdiction and authority there is no provision made for forgiving or absolving tax obligations but rather the board has the obligation to see that the tax duplicate is corrected to properly reflect the tax due.

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Therefore it is my opinion that your board may issue an order authorizing the County Auditor to correct the tax duplicate in any manner to accountably show the tax due upon the particular property involved.

There is no mention in the statute of any hearing being required before the State Board of Tax Commissioners and said Board is specifically excepted from Chapter 365, Acts of 1947. If the board has sufficient information before it, in my opinion, it could properly proceed with the correction indicated.

Therefore in consideration of the above, the answer to your first question is yes and the answer to your second question is no.

OFFICIAL OPINION NO. 104

November 12, 1953.

Mr. William C. Stalnaker, Director,
Indiana Employment Security Division,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Sir:

This is in reply to your letter of September 11, 1953 which is as follows:

“Due to budget reduction the number of personnel in the offices of the Indiana Employment Security Division has been cut drastically. This has made necessary the simplification of unemployment compensation claims payment procedures in every way possible in conformity with the Indiana Employment Security Act and still carrying out the full purposes of the law.

“The Federal Bureau has suggested that this agency adopt bi-weekly reporting for claimants but this is not approved by this Division as it would mean a delay on all claim payments. We do propose to postpone the reporting to certify for the Waiting Period week until the third week when the individual claimant has established a compensable week. The new claimant will